



The Independent
Civil Society Organisations
Coalition

THE CHALLENGES OF DEMOCRATISATION PROCESS IN SOMALILAND: THE WAY FORWARD

Briefing No. 1

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Somaliland Independent Civil Society Organisations

ISCO Somaliland

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ABOUT ISCO SOMALILAND

The Independent Civil Society Organisations Coalition (ISCO Somaliland) is a coalition for the independent civil Society organisation of Somaliland to cooperate on areas of democracy and civil rights. ISCO Somaliland will always act in accordance for the best interest of democracy and civic space based on the constitutional principles and international standards. ISCO Somaliland is committed to sustaining an independent and vibrant network of civil society actors and groups that are responsive and accountable to the people.

Every independent civil society organisation can be a member of ISCO Somaliland. The member organisations share a common vision of engagement based on participation, transparency, accountability, inclusion, fairness and trust; using commonly agreed on benchmarks, members will apply themselves to the most dynamic connotation of this vision, and affirm an engagement that is complementary in purpose, constructively critical in method and transparent in motive.

The following civil society organisations (listed in alphabetical order) are the current members of ISCO Somaliland:

1. Centre for Policy Analysis
2. Centre for Youth Empowerment,
3. COMPAD Human Rights and Community Organization
4. Garsoor Social Development organisation
5. Horseed Organisation
6. Hope Development organisation
7. Human Rights Centre
8. Solidarity Youth Voluntary Organization (SOYVO)
9. Somaliland Street Children Rehabilitation Centre
10. Somaliland Women Association (SOWA)
11. Somaliland Women Development Centre (SOWOD)
12. Voice for Somaliland Women Minority Organisation (VOSOMWO)

SUMMARY

The purpose of this briefing is to provide essential information regarding the challenges facing the democratisation process of Somaliland and to recommend steps to be taken to address challenges and learn from past lessons. There are key moments in history that define the process and needs to be revisited to understand the challenges Somaliland is encountering to advance its democratic credentials.

The inability to hold elections periodically as required by the constitution and international standards is questioning both the internal legitimacy and Somaliland's international credentials as a new democratic partner seeking international recognition. Constant extension of terms and postponement of elections marred the country's democratic credentials. The wrong turn was taken in 2007/2008, the second phase of the election cycle.

After approval of the constitution in 2001, Somaliland has taken bold steps by holding three consecutive elections in 2002, 2003 and 2005 for local councils, presidential and House of Representatives, respectively. The second phase that was planned to start in 2007 failed. The country descended into an era of stalemate, and political enigma.

The civic space started shrinking, the line between the civil society and government became blurred and democracy is arguably in decline. Despite these challenges, Somaliland remains relatively peaceful and partly free, according to Freedom House annual rankings.¹ A presidential election was held on November 2017. Somaliland remains a leading democratic country in a turbulent region.

This report identifies the following challenges:

- » Weak constitutionalism: discrepancy of theory and practice;
- » Clan domination in party politics;
- » Legal lacuna;
- » Institutional weakness;
- » Disfranchising and exclusive electoral system; and
- » Finances of political parties.

The briefing makes recommendations to progress the democratisation process, hold periodic free and fair elections, peaceful rotations of power, separation of powers, inclusiveness, freedom of expression, independence of the media and civic space.

¹ <https://freedomhouse.org/report/freedom-world/2019/somaliland>

RECOMENDATIONS

To the Government:

- » Hold elections on time and without delay. Allocate an annual budget for the elections and prepare an electoral schedule for the coming ten years;
- » Open an inclusive consultation involving the public and all stakeholders to brainstorm ways to avert delays of elections and extension of terms;
- » Review the electoral system including voter registration, voting system and civic education to address the marginalisation of women, minority clans and nomadic communities;
- » Respect the independence of the civil society, civic space and independence of media. Therefore, stop using criminal laws on media issues, banning and shutting down of media houses; and allow registration of new civil society networks. The government institutions should work with civil society organisations in equal footing without giving preference to particular organisations/networks;
- » Reform all laws that predate the constitution including the Penal Code, the Criminal Procedure Code, the Civil Code and the Civil Procedure Code. The government should establish an independent law reform commission. Reforms should be based on inclusive consultations.
- » Carryout out an assessment on how to restructure state institutions to comply the constitution of Somaliland;
- » Allocate a budget for awareness-raising and civic education for nomadic and rural communities. Information is key to democracy and taking informed decisions. Media is concentrated in cities, and rural and nomadic communities have limited information. Allow opening private radios to fill the information gap.

To the Parliament:

- » Enact separate legislation establishing an independent, strong and decentralised electoral body;
- » Approve a quota of 33% for women in both Houses of the Parliament, local councils, cabinet members and senior civil servants in higher ranking offices such as director generals and heads of government agencies, authorities and commissions;
- » Approve quota for minority clans;
- » Approve an electoral law that encompasses all elections and sets out procedural and substantive rules. The process should be based on inclusive consultations and meaningful participation of all stakeholders;
- » Amend the Registration of Political Associations and Certifications of Political Parties Act

(Law No. 14). The Act should be reviewed and amended to include unambiguous articles related to party financing, memberships, leadership contests and internal democracy. The Act should address clannism in political parties;

- » Amend the Judiciary Organisation Act and include provisions guaranteeing and ensuring judiciary independence. This should include job security for judges. Nominations of Supreme Court judges should be based on competence and merit and should be approved by the Parliament. There should be procedural and substantive provisions relevant to constitutional cases, and filling of electoral complaints in the different stages of the electoral cycle;

To the Political Parties:

- » Ensure transparency and publish funding sources and spending, and allow independent auditing of party finances;
- » Democratize parties by registering and certifying party members across regions, allowing party members to vote for party leaders and delegates and ensuring party leaderships including chairpersons, secretary generals and central committee members are democratically elected by party members;
- » To Civil Society Organisations
- » Actively work towards the advancement of democracy and civic space. Civil society organisations should prioritise in working for issues of common interest and cooperation.
- » Civil society organisations should be accountable to the people and should improve their legitimacy. Transparency should be increased;
- » Prioritise independence, nonpartisan and impartiality;
- » Community needs, concerns and demands should be the top priority of civil society organisations irrespective of political ramifications.

To the International Partners

- » Continue supporting the democratisation process of Somaliland;
- » Support initiatives directed towards improving civic space, accountability and public participation in decision making;
- » Support advocacy for quota for women and minority clans;
- » Work with stakeholders in reforming institutions and laws to improve democracy, civic space, constitutionalism and human rights;
- » Stand with civil society and media independence in Somaliland;

BACKGROUND

In February 1991, the military government of Somalia was forcefully ousted out of power after a bloody civil war that costed the lives of tens of thousands of people², injured more, destroyed cities and livelihoods and displaced hundreds of thousands of civilians.³ Rebel fighters who have been engaged in unconventional war in a decade lastly pushed a weakened military into a defeat. Mohamed Siad Barre, the country's president, who has been in the rein of power since 21st October 1969 coup fled to Kenya and then to Nigeria where he died in 1995.

Amidst the chaos caused by a collapse of the government, Somali National Movement (SNM), which captured the then Northern Regions of Somalia convened a conference in Burao town.⁴ Attended by clan representatives and SNM leadership, the delegates decided "restoration of independence of the Northern Regions of Somalia,"⁵ and nullification of the union between Somaliland, a former British Colony, and Somalia, a former Italian colony. The union happened when Somaliland gained independence from Britain in 26th June 1960 joined with Somalia in 1st July 1960.⁶

Before the military coup, the country was run by civilian governments elected by the people based on the 1961 constitution. Like any other postcolonial Africa, there were challenges. The military obliterated the democratic nature of the governance by rescinding the constitution, banning political parties, dissolving the parliament, and putting civilian leadership in jail.

Burao conference in 1991 failed to enact a charter or any other form of document that can serve as governing laws for the transitional government set by the conference. The leadership of SNM were given a two years long mandate. Immediately after the conference was concluded, clan militias battled in Burao and Berbera. The transitional government's term lapsed with little progress.

In 1993, elders and delegates representing different clans gathered in Borama to start a reconciliation process to negotiate fighting clans and to elect a new government.⁷ Borama conference approved a charter, a bicameral parliament and presidential executive.⁸ In 1997, the next conference took place in Hargeisa and followed suit Borama model of clan selections. Also, the conference obliged a referendum to be held for a constitution. In 2001, a national referendum was held and in a majority the voters approved a constitution, paving the way for a multiparty system and leaving behind clan-based selections.

When the constitution came into existence in 2001, Somaliland held the elections obliged by the constitution in 2002 (for local councils), 2003 (for president and vice-president), and 2005 for House of Representatives. Afterwards, Somaliland's speed to hold elections slowed down.

The democratisation process of Somaliland commenced in 1991. From the declaration of the restoration of independence to all clan conferences held in Borama and Hargeisa, it was clear that the people of Somaliland opted to have a democratic country ruled by a

2 African Watch Committee, "Somalia a Government at War with Its Own People," Human rights report (New York: Human Rights Watch, 1990).

3 Adam, Hussein. *From Tyranny to Anarchy: The Somali Experience*. 1st ed. Eritrea: The Red Sea Press, Inc, 2008

4 Jhazbhay, Iqbal. *Somaliland an African Struggle for Nationhood and International Recognition*. 1st ed. Midrand South Africa: Institute for Global Dialogue and the South African Institute of International Affairs, 2009.

5 15th May Declaration of Restoration of Independence

6 M, Lewis. *A Modern History of the Somali*. 4th ed. Eastern African Studies, 2002

7 Peter Pham, "The Somaliland Exception Lessons on Postconflict State Building from the Part of the Former Somalia Yat Works," Marine Corps University Journal 3, no. 1 (2012).

8 1993 Borama Charter

DEMOCRATISATION PROCESS

constitution. To realise such goal, the constitution gave sovereignty to the people. The process has taken three stages. The first phase predates the approval of the constitution and ended when the Constitution was finally blessed by the public in 2001. The second phase is from 2001 to 2005. It was within these years Somaliland held consecutive elections and was widely praised by the international community. The third phase started in 2008 and continues to this day. It marks slowing down of democratisation process, failure to hold elections on time and the constant and continuous extension of terms.

1991 to 2001: clan-based selections

In ten years from 1991 to 2001, the process in which official holders were given legitimacy was based on a clan system. Delegates from clans had the power to elect members of Parliament and the president and the vice-president. There was no popular voting. Power primarily rested with few powerful clan leaders. Upon expiration of their terms, the Parliamentarians and the president were selected by clan leaders in grand conferences. The first conference took place in 1991 in Burao, the second in Borama in 1993 and the last one was hosted by Hargeisa in 1997.

2001 to 2008: The good days

The approval of the constitution was followed by jubilation and acceleration. Three elections were held within 3 years. Somaliland was widely praised for its successes. Only the House of Elders (one of the two houses of the Parliament) and regional councils were not elected. The later was never established, although the constitution requires the people to election regional councils. The local councils (2002), president (2003) and the House of Representatives were elected.⁹ The narrowly won presidential election in 2003 was rejected by the opposition contender, Ahmed Mohamed Mohamoud "Siilaanyo" who called it as unfair. He later accepted the presidency of the then incumbent, Dahir Rayale Kahin, "for the interest of Somaliland".¹⁰

The 2003 election was unique. Dahir Rayale Kahin who was elected in 1997 as a vice-president for Mohamed Haji Ibrahim Egal took office after the death of president Egal in 2001. Rayale ran for the 2003 presidential election against Ahmed Siilaanyo, a former leader of SNM. The election result declared by the National Electoral Commission made president Kahin only 80 votes ahead of his rival.¹¹ Siilaanyo appealed to the Supreme Court to review the election in which he claimed were rigged. The Supreme Court upheld the Commission's decision and "found" that President Kahin won by a margin of 214 more rather than 80 votes. That was extraordinarily small margin.

In total, the votes received by president Kahin were less than those of the other two opposition contenders compiled. Therefore, president Kahin has been running a country with stronger opposition. The strength of the opposition with its leadership and majority on the House of Representatives created considerable checks and balances.

⁹ http://www.somalilandlaw.com/electoral_laws.html

¹⁰ More information: http://www.somalilandlaw.com/NORDEM_Report_on_the_2003Pres_Elections.pdf

¹¹ <http://africanelections.tripod.com/somaliland.html>

Candidate (Party)	Number of Votes	% of Votes
Dahir Riyale Kahin (UDUB)	205,595	42.08%
Ahmed Mohamed Silanyo (KUL-MIYE)	205,515	42.07%
Faysal Ali Warabe (UCID)	77,433	15.85% ¹

The civil society was better organised in that period. There were several networks dedicated to different issues and were working together to voice their concerns and pressure the government.

2008 to current

The term of the local councils expired in 2007 and the tenure of the president lapsed in 2008. None of these elections was held. What later became a practice started; extension of terms and postponement of elections. Somaliland never held an election on time. To the date of writing this report (September 2019), the members of the House of Representatives who were elected in 2005 are still in office. The election of the local councils was conducted in 2012, ten years after their first election. The next election was scheduled in 2017, but it is still to happen. Similarly, presidential terms were extended four years (2008 to 2010 and 2015 to 2107).

The presidential election in 2010 has changed the civil society and media landscape as well as the functions of the Parliament. Many civil society leaders and media editors joined the government of Ahmed Siilaanyo (2010 to 2017). The ruling party had a majority in the parliament, which gave dominance in both the executive and the legislature. The influx of civil society leadership in government weakened civil society organisations/networks and questioned the impartiality of the civil society.

Constitutionalism: Practice v theory

The constitution of Somaliland is a progressive document. It gives sovereignty to the people, restricts the power of the state organs by stipulating Bill of Rights, establishes separation of powers, subjects the military under civilian rule and emphasises democracy and consultations.

It is one thing to have a constitution and another thing to be abiding by it. The constitution of Somaliland is largely a document in shelves. It is rarely applied. Institutions that are pre-requirement to operationalise the constitution are not functional. Laws that predate and contradict the constitution are still applied. Legal and institutional reforms have not been taken to reinstitute the country into a democratic and human rights-based one. The fact that the country has been in one-man-rule in 21 years cannot be ignored. Many of the current institutions were created during Siad Barre military era. Uprooting these institutions are needed to make the constitution truly the supreme law of the land as stated in article 128 of the Constitution.

The democratic journey has been taken without redressing constitutional requirements and obligations. Therefore, the process lacks the spirit of constitutionalism, in which its absence makes possible to reversal.

Clan domination in party politics

Political parties were aimed to serve as a forum for politicians and as a tool and process to reach power, present policies, check power holders and unite people along with policies and ideologies. Article 9 of the Constitution limits political parties into three. Instead of forming parties that transcend clan affiliations, Somaliland political parties armoured clan affiliation and transformed it into a powerful political tool.

Political parties seek support from clan members and do not invest time or energy in widening their support beyond clan alliances. Because no single clan has numbers needed to elect a president, alliances of clans are forged by political parties in both camps. This clan dominance weakened internal democracy within parties. A political party is treated as a company owned by its leader and backed by his clan with the support of allied clans. Structures within the party required by the law to function do not exist or are dysfunctional. Political parties then emerged as authoritarian institutions operating in a democratic national platform.

The nature of the parties debilitated and hampered the democratisation process. If political parties are not democratic, expectations of democratic performance should not be high. Clan based political competitions revive interclan conflicts and resuscitate grievances that may lead to instability. It also wanes accountability and transparency, increasing nepotism and corruption.

Legal lacuna

The electoral legal framework in Somaliland is incomplete. There is no law on how parliamentarians in both houses should be elected. There is no separate law establishing the National Electoral Commission. Few articles in the Presidential and Local Councils Election Act provide the mandate of the Commission. It lacks clarity, necessary details and does not include the creation of strong secretariat for the Commission to preserve sustainability and efficiency. The Commission is also highly centralised, putting more pressure on seven members in the headquarters.

The Registration of Political Association and Certification of Political Parties Act (Law No 14) is the only legislation that puts standards on party management. It is a few pages long law with vague, contradictory and generic articles. The Act has undergone amendments, but none of these amendments addressed loopholes.

Presidential and Local Councils Election Act has been amended many times. Some of the articles were changed more than three times. The legal framework is moulded by conflicting political views that are not prioritising clearer electoral legislations. In many areas of political contestations, there are legal loopholes that are either intentionally put in place or slipped the attention of the lawmakers who later failed to correct.

Institutional weakness

Institutions are vital for the protection and promotion of democracy. As mentioned above, the electoral body needs legal and institutional reforms to make it sustainable, strong and effective institutions that can handle the everchanging and complex electoral issues. Putting all functions on the shoulders of seven members who are always under the hotspot of political controversies is not a good option. Legislating a law that establishes a stronger electoral body with effective and operational and independent secretariat formed in a decentralised format is needed. The current selection process of the members of the National Electoral Commission is highly political. An alternative mechanism has not been so far presented. Recent calls from one of the opposition parties asking an increase of the number of nominations from the opposition political parties might appease opposition parties but will only exacerbate politicisation of an institution that should be nonpartisan and independent.

The judiciary is another institution vital for the electoral process. Strengthening institutional, legal and financial independence and efficiency of the judiciary should be a top priority to preserve democracy. Unless the judiciary is perceived as independent and reliable by stakeholders, the democratisation process will face challenges. Disputes that should be resolved in a judicial process now drag the country into the never-ending political deadlock that affects the day to day activities of the government and push elections.

Disfranchising electoral system

The electoral system disfranches and marginalized groups. Efforts are not made to correct marginalisation inherent to the electoral system. Women, minority clans and nomadic communities are disfavoured by the system. The system (legally, technically and technologically), is made by urbane men who do not take into account the uniqueness of nomadic communities and demands of women and minority clans. Women are disfavoured in terms of getting elected for offices. Minority clans who are scattered in the country and are not concentrated in electoral districts are also left out to be elected. Nomadic communities, however, are unable to vote. The fixed electoral system is structured for permanent residents. This favours greatly to urban cities and gives some room to rural communities. These obstacles affect in the regions that have more nomadic communities, fuelling political grievances.

Finances of political parties

Like any other democracy, money plays a critical role. In Somaliland, there is no legal framework regulating how and where political parties and candidates can get money and how they can spend it. Henceforth, there is no regulation at all on the finances of the political parties. This increase corruption, vote paying, the possibility of foreign influence and gives more power to a few rich men.

Conclusion

A journey to fully functioning democracy requires daily inputs and cautious implementation of thoughtfully designed policies and institutional and legal reforms. Constitutionalism, rule of law and protection of human rights and enhancement of civic space are critical in any democratisation process. Somaliland should make substantive and procedural changes to move the country into a democratic direction and retain gained thresholds. Independent media and organised independent civil society are equally vital for the democratisation process.

This briefing advises stakeholders to look at issues holistically. Delays of elections are not only unconstitutional, but they also challenge the legitimacy. The transition to democracy is a result of a judgment ordained by the people in a national referendum, and enshrined in the supreme law of the land, the Constitution. Therefore, political leaders do not have discretion or prerogative to decide whether and when the election should happen.

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